IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 17137 of 1992

Between:

T. K. Krishna S/o. late T.S. Kesavulu
R/o. MIG-A/47, Dr. A.S.Rao Nagar Hyderabad - 500 762.

..... PETITIONER

AND

1 The Electronics Corporation of India Limited, rep. by its Chairman and Managing Director, Hyderabad - 500 762.
2 The Union of India rep. by its Secretary, Department of Atomic Energy, New Delhi-110001.
3 Sri K. Babu Rao
Hyderabad - 500 762.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction, directing the respondents (i) to regularise the period of absence from duty of the petitioner from 7-3-1970 to 24-2-1976 as duty with full pay and allowances, (ii) to promote the petitioner as Scientific Assistant "A" with effect from 1-8-1974 with all the consequential increments and promotions and (iii) to pay all the due arrears to the petitioner and/or pass such other order or orders as this Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.T.RAGHUNATH (W.C)

Counsel for the Respondent No.1: MR.K.SRINIVASAMURTHY

Counsel for the Respondent No.2: MR.D.SRINIVAS,

Counsel for the Respondent No.3: None appeared

The Court made the following:

Oral Order:

The petitioner was appointed as a Tradesman-B in the first respondent Corporation on 16-7-1969. He was removed from service w.e.f. 31-8-1970. The petitioner challenged the said order of termination through W.P.No.144 of 1971 on the file of this Court on the ground that the said order was passed without conducting any enquiry. The said writ petition was dismissed by this Court on 30-10-1972. Subsequently, on a representation made by him, he was taken to service as a Tradesman-C on 25-2-1976 after conducting an interview. The petitioner requested the first respondent to treat the period of absence from 7-3-1970 to 24-2-1976 as on duty with all attendant benefits. When the first respondent did not pass any favourable order, he filed W.P.No.1467 of 1980 on the file of this Court and it was partly allowed by this Court on 30-11-1987 by observing that since the petitioner was given fresh appointment, the period of absence from the date of removal till the date of fresh appointment cannot be treated as a continuous period for the purpose of extending the benefits, but it can be treated as continuity of service for the purpose of pensionery benefits. Subsequently, the petitioner made a representation to the first respondent for payment of arrears, but that representation was not considered by the first respondent. The petitioner therefore approached this Court through this writ petition seeking to direct the respondents to regularize the period of his absence from 7-3-1970 to 24-2-1976 as duty with full pay and allowances, to promote him as a Scientific Assistant-A w.e.f. 1-7-1974 and all other consequential benefits.

When the first respondent did not extend the benefit of continuity of service, the petitioner approached this Court through W.P.No.1467 of 1980 praying to direct the respondents to treat the period of absence of service as a continuous period on duty for the purpose of extending the pensionery benefits and for all other consequential benefits, this Court while partly allowing the writ petition observed as follows:

> The petitioner was admittedly appointed as a Tradesman B on September 2, 1969, and he was removed from service on August 31, 1970. Thereafter, he filed the writ petition in W.P.No.144/70 and a Division Bench of this Court dismissed it on October 30, 1972, as per the law then in force, namely, tha the respondent is not “a

State" within the meaning of Article 12 of the Constitution. Subsequently, the petitioner has applied on April 5, 1975, to appoint him as a Tradesman A supervisor. But, offer was made on May 5, 1975, to appoint him as a Tradesman C. Subject to the terms and conditions as mentioned in the letter dated February 23, 1976, the petitioner was appointed and he joined duty as a Tradesman C and ever since he has been continuing. He filed the writ petition for a mandamus directing the respondents to treat the period from 7-3-1970 to 24-2-1976 as duty with all the consequential benefits. I cannot give this wider relief sought for for the reason that the petitioner himself applied for appointment afresh and pursuant thereto, his appointment was made as per the interview held on May 5, 1975. Under these circumstances, for the purpose of the pay, etc., the petitioner cannot be treated to be in service. But, since the petitioner has been re-appointed, for the purpose of his pensionary benefits and other terminal benefits, the respondents are directed to treat his previous service to be a continuous service.

A learned single Judge of this Court partly allowed W.P.No.1467 of 1980 directing the respondents to treat the previous service of the petitioner to be a continuous service for the purpose of his pensionary and other terminal benefits. The learned Judge denied the other part of the prayer in W.P.No.1467 of 1980 viz., to pay the monetary benefits to the petitioner for the period of absence from 7-3-1970 to 24-2-1976. In the light of the prayer in W.P.No.1467 of 1980 and the judgment of this Court, as referred supra, the petitioner cannot maintain the present writ petition for the same relief of continuity of service for the purpose of getting monetary benefit for the period of absence from 1970 to 1976. Hence, the writ petition is dismissed as devoid of merits. No costs.

_____

(Dr.G. Yethirajulu, J)

17th September 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman and Managing Director, Electronics Corporation of India Limited, Hyderabad - 500 762.
2. The Secretary, Department of Atomic Energy, New Delhi-110001.
3. 2.2CD copies